

AMENDED IN ASSEMBLY MAY 13, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

AMENDED IN ASSEMBLY APRIL 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 634**

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**Introduced by Assembly Members Steinberg and Simitian**

**(Principal coauthor: Assembly Member Montanez)**

**(Coauthors: Assembly Members ~~Bermudez, Calderon~~ Berg, Bermudez, Calderon, Chan, Chavez, Calderon, Chu, Diaz, Jerome Horton, Laird, Lieber, Lowenthal, Pavley, Reyes, and Yee)**

**(Coauthors: Senators Bowen, Romero, and Speier)**

February 19, 2003

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An act to amend Section 2023 of, and to add Section 2031.1 to, the Code of Civil Procedure, relating to civil actions.

### LEGISLATIVE COUNSEL'S DIGEST

AB 634, as amended, Steinberg. Elder abuse actions: confidentiality.

The Elder Abuse and Dependent Adult Civil Protection Act, among other things, authorizes civil actions arising from abuse of elderly or dependent adults.

The Civil Discovery Act of 1986 establishes provisions relating to discovery in civil actions and special proceedings of a civil nature. The Civil Discovery Act of 1986 establishes a list of acts that constitute misuses of the discovery process.

This bill would expand that list to include destruction of relevant evidence in any civil action ~~alleging the factual foundation for which establishes a cause of action for~~ a violation of the Elder Abuse and Dependent Adult Civil Protection Act. ~~This~~ The bill would also state the intent of the Legislature in this regard.

This bill would also provide that it is the policy of the state that in any ~~case alleging civil action the factual foundation for which establishes a cause of action for~~ a violation of the Elder Abuse and Dependent Adult Civil Protection Act, confidentiality agreements are disfavored, and would require a showing, as specified, before a confidentiality agreement in this type of proceeding may be recognized or enforced by the court.

~~The bill would also state that certain provisions in the bill are declaratory of existing law.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 2023 of the Code of Civil Procedure is  
2 amended to read:  
3 2023. (a) Misuses of the discovery process include, but are  
4 not limited to, the following:  
5 (1) Persisting, over objection and without substantial  
6 justification, in an attempt to obtain information or materials that  
7 are outside the scope of permissible discovery.  
8 (2) Using a discovery method in a manner that does not comply  
9 with its specified procedures.  
10 (3) Employing a discovery method in a manner or to an extent  
11 that causes unwarranted annoyance, embarrassment, or  
12 oppression, or undue burden and expense.  
13 (4) Failing to respond or to submit to an authorized method of  
14 discovery.  
15 (5) Making, without substantial justification, an unmeritorious  
16 objection to discovery.  
17 (6) Making an evasive response to discovery.  
18 (7) Disobeying a court order to provide discovery.  
19 (8) Making or opposing, unsuccessfully and without  
20 substantial justification, a motion to compel or to limit discovery.



(9) Failing to confer in person, by telephone, or by letter with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that such an attempt has been made. Notwithstanding the outcome of the particular discovery motion, the court shall impose a monetary sanction ordering that any party or attorney who fails to confer as required pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct.

(10) The intentional destruction or suppression of evidence in any civil action ~~alleging~~ *the factual foundation for which establishes a cause of action* for a violation of the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code). *This paragraph is not intended to limit any other authority for court sanctions in those actions.*

(b) To the extent authorized by the section governing any particular discovery method or any other provision of this article, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process.

(1) The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. The court may also impose this sanction on one unsuccessfully asserting that another has engaged in the misuse of the discovery process, or on any attorney who advised that assertion, or on both. If a monetary sanction is authorized by any provision of this article, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) The court may impose an issue sanction ordering that designated facts shall be taken as established in the action in accordance with the claim of the party adversely affected by the misuse of the discovery process. The court may also impose an issue sanction by an order prohibiting any party engaging in the

1 misuse of the discovery process from supporting or opposing  
2 designated claims or defenses.

3 (3) The court may impose an evidence sanction by an order  
4 prohibiting any party engaging in the misuse of the discovery  
5 process from introducing designated matters in evidence.

6 (4) The court may impose a terminating sanction by one of the  
7 following orders:

8 (A) An order striking out the pleadings or parts of the pleadings  
9 of any party engaging in the misuse of the discovery process.

10 (B) An order staying further proceedings by that party until an  
11 order for discovery is obeyed.

12 (C) An order dismissing the action, or any part of the action, of  
13 that party.

14 (D) An order rendering a judgment by default against that  
15 party.

16 (5) The court may impose a contempt sanction by an order  
17 treating the misuse of the discovery process as a contempt of court.

18 (c) A request for a sanction shall, in the notice of motion,  
19 identify every person, party, and attorney against whom the  
20 sanction is sought, and specify the type of sanction sought. The  
21 notice of motion shall be supported by a memorandum of points  
22 and authorities, and accompanied by a declaration setting forth  
23 facts supporting the amount of any monetary sanction sought.

24 SEC. 2. Section 2031.1 is added to the Code of Civil  
25 Procedure, to read:

26 2031.1. (a) Notwithstanding any other provision of law, it is  
27 the policy of the State of California that confidentiality agreements  
28 are disfavored in any civil action ~~alleging the factual foundation~~  
29 *for which establishes a cause of action* for a violation of the Elder  
30 Abuse and Dependent Adult Civil Protection Act (Chapter 11  
31 (commencing with Section 15600) of Part 3 of Division 9 of the  
32 Welfare and Institutions Code).

33 (b) A confidentiality agreement described in subdivision (a)  
34 may not be recognized or enforced by the court absent a showing  
35 that the information is privileged, or a particularized showing,  
36 document by document, of all of the following:

37 (1) Secrecy is in the public interest.

38 (2) The proponent has a cognizable interest in the material,  
39 such as a showing that the material contains a trade secret that



1 cannot be adequately protected through redaction, or a showing  
2 that the material is otherwise protected by law from disclosure.

3 (3) Disclosure would cause serious harm.

4 (c) Except as expressly provided in this section, nothing in this  
5 section is intended to alter, modify, or amend existing law.

6 ~~SEC. 3.—The amendments to paragraph (10) of subdivision (a)~~  
7 ~~of Section 2023 of the Code of Civil Procedure made by this bill~~  
8 ~~are declaratory of existing law.~~

